

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.26765 of 2009

ORDER:

Heard Sri K.Vasudeva Reddy for petitioner and the learned Standing Counsel for respondents 1 to 4.

The petitioner calls in question office order No.CRP/PER/PM/3932/M-2386, dated 13.10.2009, transferring petitioner from K.K.II INC MM to RGM-III.

The petitioner challenges transfer order on two grounds; firstly, the order of transfer is issued in the middle of academic year and secondly, calling upon the petitioner to write report in English instead of Telugu.

The respondents filed counter affidavit and also annexures explaining the totality of circumstances and the power of respondents to transfer the petitioner from one area to another area. According to respondents, the transfer impugned in the writ petition is merely an administrative transfer and the law on the scope of judicial review in the matters of transfer is well settled. In support of their contention, the respondents relied upon a decision of the Hon'ble Supreme Court reported in *STATE OF HARYANA AND*

OTHERS Vs. KASHMIR SINGH AND ANOTHER⁽¹⁾, wherein the Hon'ble Supreme Court held as follows:

"11. Thus, a plain perusal of the Punjab Police Rules shows that transfer can be done from one district to another district or even to another range, and there is no absolute prohibition for doing so. However, in such a case, the seniority of Constables and Head Constables at the district level and of ASIs and SIs at the range level is maintained in the parent district/range despite the transfer. Promotion/confirmation is also given strictly as per the seniority in the parent district/range level, as per Memo No. 43515-22/E-(III) dated 10-8-2010.

*12. Transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well settled that courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide *Tata Cellular v. Union of India* [(1994) 6 SCC 651]"*

A decision of the Hon'ble Supreme Court reported in *STATE OF U.P. AND OTHERS V. GOBARDHAN LAL* ⁽²⁾, wherein the Hon'ble Supreme Court held as follows:

¹ (2010) 13 SCC 306

² AIR 2004 SC 2165

“8. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

9. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on

the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

A decision of this court reported in *P.VENKANNA Vs. HINDUSTAN AERONAUTICS LIMITED REP. BY ITS CHAIRMAN & MD (CMD), BANGALORE AND FOUR OTHERS*³), wherein this Court held as follows :

“9. The learned counsel appearing for the petitioner in support of his contention that this case clearly demonstrates a situation of malice in law relied upon the following judgments:

(a) Somesh Tiwari v. Union of India, (2009) 2 SCC 592 : [2009(5) SLR 506 (SC)], wherein the Supreme Court held as follows:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

(b) Kalabharati Advertising v. Hemant Vimalnath Narichania, (2010) 9 SCC 437, wherein the Supreme Court held as follows:

³ 2016 (4) SLR 123 (Telan.& A.P.)

“Legal malice

25. The State is under obligation to act fairly without ill will or malice—in fact or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.”

(c) Rajendra Roy v. Union of India, AIR 1993 SC 1236, wherein the Supreme Court held as follows:

“7..... It may not be always possible to establish malice in fact in a straight-cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions.”

12. In Rajendra Roy (supra), the Supreme Court clearly pointed out that for drawing inference of legal malice and malice in law, there must be facts pleaded and established and such inference cannot be drawn on the basis of insinuous and vague suggestions. Therefore, basing on the bare allegations levelled by the petitioner against the respondents 4 and 5 about their biased attitude against him, coupled with the suspension order passed against the petitioner on certain charges resulting in initiating disciplinary proceedings, it cannot be said that a strong prima facie case of legal malice has been made out by the petitioner. Further, on the ground that some hostile atmosphere prevailing in the unit between the petitioner and some others on one side and the

respondents 4 and 5 on the other, on account of the representations sent by the petitioner and others against the respondents 4 and 5, the petitioner cannot take advantage of the situation and avoid transfer which is made purely out of administrative exigency. No firm foundation has been laid by the petitioner to establish malice in law from his pleadings in the writ petition. As pointed out by the Supreme Court, inference in relation to malice in law cannot be drawn basing on the mere insinuation and vague suggestions. This Court is of the view that the impugned transfer proceedings/job rotation is made by the 2nd respondent at Bangalore is administrative in nature and the petitioner is not able to establish that it is prompted by mala fides and is punitive in nature. The transfer may cause hardship and inconvenience to the petitioner. It may also cause dislocation in the family set up but on that score, this Court is not supposed to exercise the power of judicial review to set aside the transfer order."

After perusing the material available on record and also the principles of law enunciated by this Court as well as the Hon'ble Supreme Court, referred to above, this Court is satisfied that the petitioner could not make out any ground for interfering with the order of transfer, except the ground of transferring the petitioner in the midst of academic year, no other ground is advanced.

The writ petition fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 02-08-2017

Prv

